

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

WILLIAM W. BUDROW
Plaintiff

V.

NO. 2:97CV119-B-B

EDWARD L. MONTEDONICO, both
individually and as Trustee,
WILLIAM HOUSTON BROWN, and
JOHN E. McMANUS
Defendants

MEMORANDUM OPINION

This cause comes before the court upon the motion of the defendant, William Houston Brown, to dismiss. The plaintiff has failed to respond. Upon due consideration of the defendant's memorandum brief, the court is ready to rule.

FACTS

The plaintiff and his wife, Celeste Budrow, who were represented by counsel at the time, filed for bankruptcy in the United States Bankruptcy Court for the Western District of Tennessee on December 19, 1994. The defendant William Houston Brown, United States Bankruptcy Judge, was assigned to the case. Although the plaintiff listed his address as Senatobia, Mississippi, the plaintiff's bankruptcy petition reflected that the plaintiff's domicile, residence, or business assets were located in the Western District of Tennessee for the 180 days preceding the plaintiff's petition. The plaintiff's bankruptcy petition claimed total assets of \$3500.00 and total liabilities of \$750,000.00 with no income. The bankruptcy court designated the plaintiff's petition as a "no asset" case and appointed the defendant Edward Montedonico trustee.

In March of 1995, a creditor filed a complaint to determine dischargeability. In plaintiff's response to the creditor's complaint, he admitted that the bankruptcy court had jurisdiction. Another creditor filed a complaint commencing an adversary proceeding which sought a non-dischargeable judgment against the plaintiff. At the trial of the matter, the plaintiff and his wife made numerous statements which revealed that they held an interest in at least three pieces of property located in Mississippi, Connecticut, and California, with a value of over \$3 million. The plaintiff contends that these properties are owned by a family trust of which he and his wife hold no beneficial interest. The bankruptcy court, finding no proof of the validity of the trusts, denied the plaintiff's petition for discharge. The plaintiff failed to timely appeal, despite being granted an extension of time in which to do so.

In March of 1996, at the direction of the bankruptcy court, the defendant Montedonico commenced an adversary proceeding seeking the turnover of the trust property. The trustee's complaint asserted that the property held in trust was transferred into the trusts under circumstances which constituted a recoverable fraudulent conveyance. In his answer to the trustee's complaint, the plaintiff again admitted to the bankruptcy court's jurisdiction and to the proper venue in the Western District of Tennessee. Defendant Brown eventually recused himself and the case was reassigned to another judge. It appears that the case is still pending.

The plaintiff has now filed suit in this court asserting fraud, abuse of process, and intentional infliction of emotional distress. The plaintiff asserts that this court has jurisdiction based on diversity of citizenship, as the plaintiff is a Mississippi resident and each of the defendants resides in Tennessee. The plaintiff further asserts other grounds for jurisdiction, including jurisdiction under 28 U.S.C. § 1331 (even though the plaintiff has not raised any federal cause of action). The plaintiff maintains that defendant Brown knew or should have

known that the Western District of Tennessee lacked jurisdiction to hear the bankruptcy action, as neither of the named debtors resided or conducted business in Tenn despite Brown's knowledge of the alleged lack of jurisdiction, Brown refused motions to dismiss the action. The plaintiff claims that Brown willfully and maliciously issued rulings relative to trusts that were not part of the bankruptcy estate, that Montedonico made misrepresentations to the bankruptcy court to the detriment of the plaintiff, and that defendant McManus, as the attorney appointed to represent the trustee, participated in Montedonico's misrepresentations.

LAW

In considering a motion to dismiss, the district court must accept all well-pleaded facts as true and view them in the light most favorable to the plaintiff. Baker v. Putnal, 75 F.3d 190, 196 (5th Cir. 1996). Dismissal is not appropriate unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Doe v. Hillsboro Indep. Sch. Dist., 81 F.3d 1395, 1401-1402 (5th Cir. 1996).

As a United States Bankruptcy Court Judge, the defendant Brown is entitled to absolute judicial immunity. As with other forms of official immunity, judicial immunity is an immunity from suit, not just from the ultimate assessment of damages. Mireles v. Waco, 502 U.S. 9, 11, 116 L. Ed. 2d 9, 14 (1991). Judicial immunity is not overcome by allegations of bad faith or malice. Id. at 502 U.S. at 11, 116 L. Ed. 2d at 14; See also Pierson v. Ray, 386 U.S. 547, 554, 18 L. Ed. 2d 288, 294 (1967) ("immunity applies even when the judge is accused of acting maliciously and corruptly"). There are only two sets of circumstances in which judicial immunity can be overcome. First, a judge is not immune from liability for actions that are not taken in the judge's judicial capacity. Second, a judge is not immune from suit for actions which, although judicial in nature, are taken in the complete absence of all jurisdiction. Mireles, 502

U.S. at 11-12, 116 L. Ed. 2d at 14.

Neither of the exceptions to judicial immunity applies. The plaintiff's complaint does not assert any facts in which Brown was alleged to be acting outside the scope of his judicial capacity. Furthermore, although the plaintiff contends that the bankruptcy court lacked jurisdiction, this court does not find that defendant Brown's alleged actions were taken in the complete absence of all jurisdiction. The United States Bankruptcy Courts, as units of the United States District Courts, have nationwide subject matter jurisdiction of all cases arising under title 11. See 28 U.S.C. § 1334(a). Personal jurisdiction was likewise satisfied when the plaintiff voluntarily filed his bankruptcy petition in the Western District of Tennessee, thus submitting himself to the jurisdiction of that court. For these reasons, the court finds that the defendant Brown is entitled to invoke the doctrine of absolute judicial immunity as a bar to the plaintiff's cause of action against him.

CONCLUSION

For the foregoing reasons, the court finds that the defendant's motion to dismiss should be granted. An order will issue accordingly.

THIS, the ____ day of December, 1997.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE